

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-92 (4) I
Income Tax
July 14, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I920422C

On April 22, 1992, a Petition for Advisory Opinion was received from Business Operations Systems & Svcs., d/b/a Computerized Payrolls, 17 Delray Drive, Cheektowaga, New York 14225.

The issue raised by Petitioner, Business Operations Systems & Svcs., is whether it must furnish its employer identification number (hereinafter "EIN") to clients for purposes of the WT-1 Return of Tax Withheld required to be submitted to New York State, and if so, can a different identification number be used.

Petitioner contends that it is not a paid preparer of the WT-1 Return of Tax Withheld, but is a payroll preparation service. Petitioner supplies answers to math problems. It does not make any arbitrary decisions or judgments or offer opinions to affect what an employer or employee owes in their personal or business tax returns. Petitioner does not complete or even see the WT-1's of the majority of their clients.

Section 697(a) of the Tax Law provides that the Commissioner of Taxation and Finance shall administer and enforce the tax imposed by Article 22 and is authorized to make such rules and regulations, and to require such facts and information to be reported, as he may deem necessary to enforce the provisions of Article 22.

Section 174.1(a) of the Personal Income Tax Regulations (hereinafter "Regulations") provides that, except as otherwise provided, every employer required to deduct and withhold New York State personal income from wages under Article 22 of the Tax Law must file a New York State employer's return of tax withheld on form WT-1. Section 174.7 of the Regulations provides that, unless the context clearly requires otherwise, any reference in such Regulations to "New York State employer's return" shall be deemed to include reference to the "New York State employer's return of tax withheld" referred to in section 174.1 of the Regulations.

Section 158.1(c) of the Regulations provides:

Identifying numbers. (1) Every person required to make or file a New York State income tax return, statement, document, or other form prescribed by the [Commissioner of Taxation and Finance] must include on the New York State income tax return, statement, document, or other form being made or filed, an identifying number or numbers in the form of social security numbers, employer identification numbers, or other numeric designations suitable for proper identification of such person.

(2) Any person with respect to whom a New York State income tax return, statement, document, or other form prescribed by the [Commissioner of Taxation and Finance] is required to be made or

filed by another person under the authority of this Subchapter, must furnish such other person with an identifying number or numbers in the form of social security numbers, employer identification numbers, or other numeric designations suitable for securing proper identification of the person with respect to whom the New York State income tax return, statement, document or other form is required to be made or filed.

(3) Any person required under the authority of this Subchapter to make or file a New York State Income tax return, statement, document, or other form prescribed by the [Commissioner of Taxation and Finance] with respect to another person must request from such other person and must include on the New York State income tax return, statement, document, or other form being made or filed for such other person, an identifying number or numbers in the form of social security numbers, employer identification numbers, or other numeric designations suitable for securing proper identification of such other person.

. . .

(5) The [Commissioner of Taxation and Finance] may require such information as may be necessary to assign an identifying number to any person subject to the provisions of this Subchapter.

(6) For penalty for failure to supply identifying numbers, see subsection (k) of section 685 of the Tax Law.

Section 174.5(a) of the Regulations provides that each employer must be identified by a New York State EIN which is the same as the employer's Federal EIN. An employer cannot have more than one EIN.

Since the WT-1 Return of Tax Withheld requires an employer to provide the name and identification number of the payroll service that it uses, the payroll service must provide such information to the employer pursuant to section 158.1(c) of the Regulations. The payroll service identification number required to be furnished is the payroll service's EIN, pursuant to section 174.5 of the Regulations.

Accordingly, Petitioner must furnish its EIN to its clients for purposes of completing the WT-1 Return of Tax Withheld. Petitioner cannot use a different identification number.

It should be noted that pursuant to section 153.6(b) of the Regulations, where a payroll service provides its clients with sufficient information and advice so that completion of the WT-1 return is largely a mechanical or clerical matter, such payroll service is considered an income tax return preparer, even though such person does not actually place or review placement of information on such return.

Section 658(g) of the Tax Law and section 153.6(a) of the Regulations provides that an individual who is an income tax return preparer, with respect to a New York State income tax return, must manually sign such return in the appropriate space provided on the New York State income tax return after it is

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completed and before it is presented to the taxpayer for signature. Also, any New York State income tax return prepared by an income tax return preparer shall bear such identifying number (social security number and/or EIN) necessary for securing proper identification of such preparer, such preparer's employer, or both, as may be required by forms and instructions.

DATED: July 14, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.